IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

WRIT PETITION NO. 283 OF 2006 .

M/s Hindustan Lever Limited. ... Petitioner.

V/s.

Hindustan Lever Employees ... Respondents.

Mr. K.M. Naik i/b S.P. Salkar for the petitioner.

Ms. Meena Doshi with Ms. Jane Cox .for the respondents.

CORAM : V.C.DAGA, J.

DATED : 27.2..2006.

ORDER :

. This petition is directed against the common order passed below Ex. U-1 and C-1 dated 17th October, 2005 passed by the Industrial Court, Mumbai, in Complaint (ULP) No. 432 of 2005, whereby the preliminary objection as to " Whether Industrial Court has jurisdiction to entertain the complaint in the absence of there being employee- employer relationship; came to be rejected.

Factual Matrix:

2. The factual matrix giving rise to this petition is that some time in the year 1989 the petitioner had proposed a lockout.

3. The Respondent No.1-Union had filed a

complaint under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short), bearing complaint (ULP) No. 855 of 1989, which came to be allowed by the Industrial Court. Writ petition filed against that order was dismissed by the learned Single Judge. Appeal challenging this dismissal of writ petition preferred before Division Bench also came to be dismissed.

. Petitioner after aforesaid litigation; transferred its factory activities at Sewri, Mumbai to their subsidiary M/s Bon Limited.

4. The respondent- Union served charter of demand on 7th December, 2004. Schedule to those demands included four items. The details of which are not necessary for disposal of this petition.

5. The aforesaid demands led to discussions in the Counciliation proceeding which led to filing of another complaint No. 789 of 2004 by the respondent-Union in the Industrial Court. Interim relief prayed therein came to be refused. The respondent NO.1-Union carried the matter to the High Court by way of Writ Petition No. 269/2005. The learned Single Judge heard the matter and disposed of the same by consent order dated 28.2.2005, the

details of which are also not necessary for disposal of this petition.

6. The learned Assistant Labour Commissioner, after the above order to declined proceed with the conciliation by an order dated 28.2.2005, which, ultimately, came to be challenged before the Division Bench; by way of Writ Petition No. 1756/2005 which came to be disposed of by an order dated 19.7.2005; whereby order of the Conciliation Officer refusing to proceed with the conciliation came to be set aside. Conciliation proceedings were revived with a direction to decide the same with expeditious despatch. The Division Bench while disposing of the writ petition vide its order dated 19.7.2005 observed as under:

> . "Result of this will be that in the event the matter is subsequently settled or decided either in conciliation or later on before the appropriate authority, the Management may as well as succeed in it. However, if it does not succeed, it will be open to the workmen, whose relationship is now terminated, to canvass that they have a right based on the termination being bad and illegal. Similarly, if the order is held to be bad, the workmen who joined the new management will be entitled to contend that they have a right to go back to respondent No.3 and that the earlier management must take up the undertaking from one to whom it is now transferred. In our view, the order passed by the learned Single Judge is therefore clear and the Assistant Commissioner of Labour was in error in concluding the proceeding before him by declining to intervene."

. The aforesaid order dated 19.7.2005 came to be challenged in the Supreme Court in S.L.P. which also came to be dismissed vide order dated 2.9.2005.

7. At this juncture, it will not be out of place to mention that the petitioner had filed Spl. Leave Petition No. 5548/05 before the Apex Court against the earlier order of this Court dated 20.12.2004 passed by the Division Bench of this Court in Appeal No. 81/1999 confirming the order of the learned Single Judge in Writ Petition No. 287 of 1995 arising out of Complaint No.855 of 1989. When the said S.L.P. came up for hearing on 28.3.2005 the Apex Court was pleased to pass the following order:

> . " Issue notice.
>
> . Mr. Bharat Sangal,learned Counsel accepts notice on behalf of the respondents.
>
> . Status-quo as on today shall be maintained regarding the possession and ownership as well as the present situation in the factory."

8. After an order dated 28.2.2005, passed by this Court in W.P. No. 269./2005, respondent No.3 applied to the Apex Court for modification of their order dated 28th March 2005. The Apex Court was pleased to modify its earlier order vide dated 9th May, 2005 the text of which is reproduced

hereinbelow:

> . " The I.A. has been filed for modification of the order of status quo passed by this Court on 28.3.2005, it is brought to our notice that on 20.2.2005 parties agreed to certain terms before the Bombay High Court. We make it clear that the order of status quo as directed by us will be subject to order by the consent of the parties as recorded by the Bombay High Court on 28.2.2005.2.2005.
>
> Rejoinder, if any, may be filed within two weeks. List this petition for final disposal on any miscellaneous day."

9. Pursuance to the consent order dated 28.2.2005 the said Sewri factory/Undertaking came to be transferred by the petitioner-Company to the respondent No.3 herein w.e.f. 17.7.2005. Consequently, the services of all the workmen working in the said factory including Managers, Officers etc. stood transferred to respondent No.3 w.e.f. 17.7.2005. However, services of remaining 42 workmen, who did not accept and join the services of the respondent No.3, came to be terminated.

10. Respondent No.1-Union on 5.9.2005, filed another complaint being Complaint (ULP) No. 432 of 2005 before the Industrial Court,Mumbai, inter alia; praying for a direction to allow the member -employees of the Union entry through Sopari Gate, restraining the Company from shutting out the workmen concerned, with prayer to restrain the

transfer of P.F. to any other authority, trust including Regional Provident Fund Commissioner. In the said complaint, petitioner moved an application on 12.9.2005 (Ex.C-1), praying for decision on issue regarding jurisdiction of the Industrial Court to entertain and try the complaint for want of employee-employer relationship.

11. Parties to the complaint filed their respective replies and also filed relevant documents in support of their rival contentions. The Industrial Court, after hearing the parties by an order dated 17.10.2005 rejected the said application of the Company (Ex.C-1).

12. The aforesaid order of the Industrial Court dated 17.10,.2005 is the subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

13. The main bone of contention before the Industrial Court was that after transfer of the Undertaking w.e.f. 17.7.2005; no relationship of employee-employer existed between the petitioner and the members of the Union, as such complaint under MRTU & PULP Act, was not maintainable for want of employer-employee relationship.

Submissions:

14. Learned Counsel appearing for the petitioner submits that there exists no employee- employer relationship between the employer-Company and its employees. According to him, after transfer of Undertaking the workmen did not join transferred establishment i.e. respondent No.3-Company as such in view of their termination from service they ceased to be employees of the petitioner-company. In view of this complaint filed under MRTU & PULP Act ought to have been dismissed holding it to be untenable for want of employee-employer relationship.

15. Learned Counsel for the petitioner, would submit that provisions of the MRTU & PULP Act, 1971 could only be enforced by a workman. If there is dispute with regard to the existence of relationship between workman and employer, then such dispute must be resolved by a reasoned judgment by an appropriate forum other than the forum created under MRTU & PULP Act as the provisions of the said Act are summary in nature. It is only after status of workman is established in appropriate forum the complaint could be filed under the provisions of the MRTU & PULP

Act.

16. In support of the above submissions, learned Counsel for the petitioner relied upon the following judgments:

1 . Cipla Ltd.
vs.
Mah. General Kamgar Union
(2001 1 CLR 754)

2. Sarva Shramik Sangh
vs.
M/s Indian Smelting &
Refining Co.Ltd. & ors.
(2003 III CLR 949)

3. Hindustan Coca Cola Bottling S/W P.Ltd.
vs.
Bharatiya Kamgar Sena & ors.
(2001 III CLR 1025)

4. Quadricon Pvt.Ltd & ors.
vs.
Maxi D'Souza & ors.
(2004 III CLR 530)

5. Lokmat Proprietors, Lokmat News Papers
vs.
Prabhakar Rambhauji Choudhari & ors.
(2003 1 CLR 550).

6. Vividh Kamgar Sabha vs. Kalyan Steels Ltd.
(2001 AIR SCW 170)

Per Contra:

17. Mrs. Meena Doshi Learned Counsel for respondent No.1 would contend that in the application dated 12.9.2005 (Ex. C-1) petitioner never claimed or prayed for disposal of the

complaint. Prayer was only to decide preliminary issue involving question of jurisdiction of the Industrial Court to try the complaint. She would further submit that the view taken by the Industrial Court is a reasonable and possible view and, that too, taken at the interim stage of the complaint. As such this is not a fit case wherein this Court should exercise writ jurisdiction under Article 226 of the Constitution of India. She would further submit that the order of the learned Single Judge dated 28.2.2005 in Writ Petition No. 269/2005 was a consent order, which was passed without prejudice to the rights and contentions of both the parties reserving their legal rights keeping all questions of law and facts expressly open; as such said order by no stretch of imagination can be used to take away their legal rights to get their claims adjudicated upon.

18. It is further submitted that so far as Division Bench order dated 28.2.2005 in Writ Petition No. 269.05 is concerned, the Division Bench has, specifically, observed that in the event the matter is, subsequently, settled or decided in the conciliation or later on by any appropriate authority, the management may as well succeed. However, if it does not succeed, it will be open to the workman, whose relationship is being terminated,

to canvas that they have a right based on the termination being bad and illegal. Similarly, if the transfer is held to be bad, the workmen who joined the new management will be entitled to contend that they have a right to go back to the petitioner, the old management and that the earlier management must take back the undertaking from one to whom it was transferred. Taking advantage of these observations of the Division Bench, learned Counsel for respondent No.1 would submit that even the Division Bench in its order has kept all rights and contentions of the rival parties open for judicial scrutiny in appropriate forum.

19. Learned Counsel for respondent No.1 would further submit that subsequent to the so-called transfer with effect from 17.7.2005, petitioner in SLP No. 5545/05 filed an application seeking permission to take steps for the closure of the Bombay Factory in accordance with law. M/s Bon Ltd. was not a party to the said proceedings in the Supreme Court of India. According to her submission, the action taken by the petitioner by filing an application after 17.7.2005 was diametrically opposite to the contentions now taken by the petitioner in its application dated 12.12.2005. She submits that the supreme Court was, however, pleased to reject the said SLP as well as

interim application filed therein vide its order dated 13.12.2005. It is, thus, submitted that the petitioner cannot be allowed to blow hot and cold.

20. It is further submitted that all the three judgments of the Apex in the cases of (1) Cipla Ltd. (2) Kalyani Steels Ltd and (3) Sarva Kamgar Sanghe (cited supra) were the cases involving Contract Workers, as such ratio of the said judgments cannot be invoked to non-suit respondent No.1-the complainant. Reliance is placed on the judgment of the learned Single Judge of this Court in case of **Krantikari Suraksha Rakshak Sanghatana, Thane, vs. A.L. Alaspurkar & ors. 1996 II CLR 76**. Learned Counsel for the respondent No.1- Union, has thus, prayed for dismissal of the petition.

Consideration:

. Having heard rival parties, none of the contentions raised by the petitioner can be accepted.

21. At the outset, it must be pointed out that both orders; one passed by the learned Single Judge in Writ Petition No. 269/05 dated 28.2.2005 and another passed by the Division Bench in W.P. (L.G.) No. 1756/2005 dated 19.7.2005, have kept rights of

the parties in tact to challenge the action of the petitioner-management in accordance with law. Both orders incorporate an arrangement pending adjudication of the dispute between the parties permitting them to get their respective rights adjudicated in accordance with law. Reliance placed by the petitioner on 3 judgments of the Apex Court referred to hereinabove, were cases involving contract workers. In Cipla vs. Mah. Kamgar Union (supra), which is the foundation of the subsequent judgments made it clear that the respondent union had approached the Labour Court with a complaint that the workmen engaged by the appellant therein were engaged through the contractor. Though that was an ostensible relationship but the true relation one of master and servant was between the appellant therein and the workmen in question. By this process, workman tried to repudiate their relationship with the contractor under whom they were employed and claimed relationship of an employee under the appellant therein. The Apex Court in the circumstances held that exercise of repudiation of contract with one and establishment of a legal relationship with another can be done only in a regular Tribunal/Court under the Industrial Disputes Act.

22. The other two judgments referred to above,

also relate to contract workmen wherein law laid down in Cipla's case was relied upon. The case at hand is a case where the existence of master and servant relationship at one point of time (may be in the past) is not in dispute. The Division Bench of this Court in Hindustan Coca Cola Bottling s/w Pvt. Ltd. (supra) has said as under:

> " We hasten to add that as pointed out by the Supreme Court in Cipla Ltd. if at any time the employer-employee relationship is recognised by the employer and subsequently it is disputed such a question would be incidental question arising under section 32 of the Act and the Labour Court or the Industrial Court as the case may be would be competent to decide such question. However, however, in a case where the employer had never recognised the workmen as his employees and throughout treated these persons as employees of the contractors, the Court constituted under section 28 of the MRTU & PULP Act will have no jurisdiction to entertain the complaint unless the status of relationship of employer-employee is first determined in a proceedings under the Industrial Disputes Act."

23. At this stage, it would be useful to notice that provisions of section 2(s) of the MRTU & PULP Act which defines "workman" is an exhaustive definition and excludes only specific categories being (i)(ii)(iii) and (iv) of section 2(s). It is not in dispute that there was relationship of employee-employer between the petitioner and members of respondent No.1. Severance of the relationship by virtue of order of termination and legality

thereof can a matter of legal debate. But, it cannot be disputed that in the past there was no relationship of employee-employer between them. Therefore, members of Union whose services have been terminated will always be treated as persons falling within the sweep of the definition of "workmen" under sec.2(s) of the Act. Therefore, in order to determine whether an industrial dispute has been properly raised, one must read section 2(k) and section 2 (s) in conjunction, as held in number of cases.

24. In the case of workman of **Dimakuchi Tea Estate (Assam Chah Karmachari Sangha) and Dimakuchi Tea Estate (1958 1 LLJ 500),** the question involved was whether the dispute in relation to a person who is not a 'workman' within the meaning of the act could fall within the definition of section 2 (k) of the Act. After considering the preamble of the Scheme of the Act, Supreme Court observed as under:

> . "The Act is primarily meant for regulating the relations of employers and workmen- past, present and future. It draws a distinction between "workmen" as much and the managerial or supervisory staff, and confers benefit on the former only."

I am, therefore, unable to accept the contention that the person in respect of whom the Contract of employment has ceased to exist cannot fall within

the definition of "workman."

25. In the case of **Ceat Ltd v.Anand Aba Saheb Hawaldar & ors. (2001 III CLR 434)** a complaint under Item No.9 of Schedule IV was filed by certain employees who had resigned from the company and had accepted VRS. The maintainability of the complaint was challenged by the company on the ground that the employees had ceased to be employed in the industry. It was held that certain rights had accrued to them under an agreement entered into by them when in employment and that they could therefore enforce their right under the agreement.

26. In the case of **ICI India Ltd. vs. Presiding Officer and ors. (1993 1 CLR 753** it was held that a person in respect of whom the contract of employment has ceased to exist could still raise an industrial dispute. This was a case of non-payment of certain pensionary benefits to employees who had retired/resigned.

27. In the above view of the matter, it is difficult to reach to the conclusion that the impugned order is a perverse order liable to be set aside in exercise of writ jurisdiction . The view taken by the Courts below is a reasonable and possible view and no fault can be found with the

said view in exercise of writ jurisdiction. This Court not being a Court of appeal cannot substitute reasonable, possible well considered view of the Courts below. Petition is, therefore, devoid of any substance and liable to be dismissed in limine.

28. At this stage, learned Counsel appearing on behalf of the respondents prayed for continuation of the order of this Court dated 10th January, 2006 concerning transfer of P.F. Account. It appears that by an order dated 15.10.2005 passed below Ex. U-2 the Industrial Court was pleased to direct the parties to maintain status-quo so far as transfer of P.F. Account is concerned. The said order was further continued by the Division Bench (before transferring writ petition to Single Bench) vide its order dated 10th January, 2006 until petition was heard for admission. Since this petition is being dismissed in limine some order in that behalf would be necessary.

29. In view of dismissal of this petition, it would now be necessary for the Industrial Court to resume and proceed with the proceedings pending on its file in accordance with law. In this view of the matter, Industrial Court will have to hear and decide Exh.U-2 after hearing the parties by a reasoned order. It has, therefore, become necessary

to clarify that the order of the Industrial Court dated 15.10.2005 passed below Exh.U-2 granting status-quo, subsequently continued by Division Bench vide its order dated 10th January, 2006 shall operate till disposal of Exh. U-2 pending on the file of Industrial Court. All rival contentions in that behalf are kept open.

30. In the result, petition is dismissed in limine in terms of this order with no order as to costs.

(V.C. DAGA,J.)